

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DARREN HARRIS,

Plaintiff,

v.

KIM, et al.,

Defendants.

Case No. 1:05-cv-00003-AWI-SKO (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(Doc. 177)

Plaintiff Darren Harris ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 3, 2005. This action is proceeding on Plaintiff's fourth amended complaint against Defendants Olivarria, Williams, and Kim for violation of the Eighth Amendment, and against Defendants Olivarria and Lowden for violation of the First Amendment. (Doc. 87.) This action is currently set for jury trial before the Honorable Anthony W. Ishii on January 26, 2016. (Doc. 174.)

On June 15, 2015, Plaintiff filed a motion seeking the appointment of counsel. Plaintiff does not have a constitutional right to the appointment of counsel in this action. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970; *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate his claims

1 *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970 (citation
2 and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is dispositive and
3 they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation marks omitted);
4 *Wilborn* 789 F.2d at 1331.

5 In the present case, the Court does not find the required exceptional circumstances. Even
6 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations
7 which, if proved, would entitle him to relief, his case is not exceptional. The Court is faced with
8 similar cases almost daily. Further, the Court cannot make a determination that Plaintiff is likely
9 to succeed on the merits, and based on a review of the record in this case, the Court does not find
10 that Plaintiff cannot adequately articulate his claims. *Palmer*, 560 F.3d at 970.

11 While the Court recognizes that Plaintiff is at a disadvantage due to his *pro se* status and
12 his incarceration, the test is not whether Plaintiff would benefit from the appointment of counsel.
13 *See Wilborn*, 789 F.2d at 1331 (“Most actions require development of further facts during
14 litigation and a *pro se* litigant will seldom be in a position to investigate easily the facts necessary
15 to support the case.”) The test is whether exceptional circumstances exist and here, they do not.

16 Plaintiff’s motion for the appointment of counsel is HEREBY DENIED, without prejudice.

17
18 IT IS SO ORDERED.

19 Dated: July 29, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE